

No. 23-\_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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CHARLES R. HAYS,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Seventh Circuit**

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**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether law enforcement has probable cause under the Fourth Amendment's automobile exception to search a *driver's* vehicle based on a *passenger's* personal possession of contraband.

**PARTIES TO THE PROCEEDING**

Petitioner Charles R. Hays was the Defendant-Appellant in the Seventh Circuit. Respondent the United States of America was the Plaintiff-Appellee in the Seventh Circuit.

## **RELATED PROCEEDINGS**

The proceedings directly related to this petition are:

*United States of America v. Charles R. Hays*, No. 3:20-cr-30021 (C.D. Ill.) (judgment entered Dec. 16, 2022).

*United States of America v. Charles R. Hays*, No. 22-3294 (7th Cir.) (judgment entered Jan. 12, 2024).

**TABLE OF CONTENTS**

	<b>Page</b>
QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDING .....	ii
RELATED PROCEEDINGS .....	iii
OPINIONS BELOW .....	1
JURISDICTION .....	1
CONSTITUTIONAL PROVISION INVOLVED .....	1
INTRODUCTION .....	2
STATEMENT OF THE CASE .....	4
A.    Factual Background.....	4
B.    Procedural History.....	5
REASONS FOR GRANTING THE WRIT .....	7
I.    THE SEVENTH CIRCUIT'S DECISION CREATE A SPLIT WITH THE OREGON SUPREME COURT .....	8
II.   THE SEVENTH CIRCUIT'S DECISION DEPARTS FROM THIS COURT'S PRECEDENTS .....	9
III.  THE CASE RAISES AN IMPORTANT QUESTION ABOUT THE AUTOMOBILE EXCEPTION'S SCOPE .....	14
CONCLUSION .....	16

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
APPENDIX A: Opinion of the United States Court of Appeals for the Seventh Circuit .....	1a
APPENDIX B: Opinion of the United States District Court for the Central District of Illinois (Sept. 10, 2021).....	7a
APPENDIX C: Judgment of the United States District Court for the Central District of Illinois (Sept. 10, 2021).....	21a

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>CASES</b>	
<i>Brinegar v. United States</i> , 338 U.S. 160 (1949) .....	15
<i>Brown v. Texas</i> , 443 U.S. 47 (1979) .....	12
<i>Byrd v. United States</i> , 584 U.S. 395 (2018) .....	14, 15
<i>California v. Acevedo</i> , 500 U.S. 565 (1991) .....	3, 10, 11, 12, 14, 15
<i>Coolidge v. New Hampshire</i> , 403 U.S. 443 (1971) .....	16
<i>Illinois v. Wardlow</i> , 528 U.S. 119 (2000) .....	12
<i>Rakas v. Illinois</i> , 439 U.S. 128 (1978) .....	14
<i>State v. Anspach</i> , 692 P.2d 602 (Or. 1984) .....	8
<i>State v. Herrin</i> , 915 P.2d 953 (Or. 1996) .....	2, 8, 9
<i>State v. Lee</i> , 532 P.3d 894 (Or. 2023) .....	8

**TABLE OF AUTHORITIES**  
 (continued)

**Page(s)**

<i>United States v. Di Re</i> , 332 U.S. 581 (1948) ....	12
<i>United States v. Hays</i> , 2021 WL 4130501 (C.D. Ill. Sept. 10, 2021) ....	1, 6
<i>United States v. Hays</i> , 90 F.4th 904 (7th Cir. 2024) ....	1, 6
<i>United States v. Ross</i> , 456 U.S. 798 (1982) ....	3, 10, 11, 12, 14, 15
<i>Wyoming v. Houghton</i> , 526 U.S. 295 (1999) ....	3, 6, 7, 9, 13, 14
<i>Ybarra v. Illinois</i> , 444 U.S. 85 (1979) ....	12

**CONSTITUTIONAL AND STATUTORY AUTHORITIES**

U.S. Const. amend. IV ....	1, 4, 8, 11, 12, 15, 16
21 U.S.C. § 841 ....	5
28 U.S.C. § 1254 ....	1

**OTHER AUTHORITIES**

6 WAYNE R. LAFAVE, SEARCH & SEIZURE ....	8, 14
--	-------

**TABLE OF AUTHORITIES**  
(continued)**Page(s)**

Kellen Browning, <i>Uber Reports Record Ridership and Second Straight Quarterly Profit</i> , N.Y. TIMES (Nov. 7, 2023).....	15
Office of Highway Policy Information, <i>High Occupancy Vehicle (HOV) Lanes—by State</i> , U.S. DEPARTMENT OF TRANSPORTATION (Nov. 7, 2014).....	15

**OPINIONS BELOW**

The District Court's judgment in Petitioner's criminal case is unreported and reproduced at App. 21a. The District Court's decision denying Petitioner's motion to suppress is not reported in the Federal Supplement but is available at 2021 WL 4130501 and is reproduced at App. 7a. The Seventh Circuit's decision affirming the District Court's order is reported at 90 F.4th 904 and is reproduced at App. 1a.

**JURISDICTION**

The Seventh Circuit issued its opinion and entered judgment on January 12, 2024. No petition for rehearing was filed. This Court has jurisdiction under 28 U.S.C. § 1254(1).

**CONSTITUTIONAL PROVISION INVOLVED**

The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

## INTRODUCTION

When police conduct a traffic stop and uncover drugs on a driver, they have probable cause to search the vehicle pursuant to the automobile exception to the Fourth Amendment's warrant requirement. Though police find the drugs only on the driver's person, courts have held that it is reasonable for police to believe that the suspicion of wrongdoing extends more broadly to the driver's vehicle, given the driver's dominion and control over the vehicle. But this same rule does not apply when police find drugs on a *passenger's* person. A passenger's possession of contraband does not alone implicate the driver's vehicle, precisely because a passenger does not possess ownership or control over the vehicle merely by riding in it. Thus, to establish probable cause to search a vehicle when a passenger is suspected of wrongdoing, there must be something tying the passenger's suspected wrongdoing to the driver or the vehicle.

Though this conclusion follows from this Court's automobile exception precedents, the question whether a passenger's possession alone establishes probable cause to search a vehicle has generated a split among the lower courts. In *State v. Herrin*, 915 P.2d 953 (Or. 1996), the Oregon Supreme Court held that a passenger's possession of contraband is insufficient to give police probable cause to search a *driver's* vehicle without some evidence of a connection between the passenger's suspected wrongdoing and either the vehicle or the driver. In the decision below, by contrast, the Seventh Circuit rejected the distinction between drivers and passengers and held that a passenger's possession alone provides probable cause to search the vehicle. Under its approach, when

officers discover contraband on a passenger, that alone establishes probable cause to search the *driver's* car. According to the Seventh Circuit, that is true even where, as here, officers have no reason to believe that the driver had control over that contraband or that the passenger had control over the car.

In reaching this conclusion, the Seventh Circuit not only created a split with the Oregon Supreme Court, but also departed from this Court's precedents. When a *driver* has contraband, police may have probable cause to search his car and every container in it (even containers belonging to a passenger). *See Wyoming v. Houghton*, 526 U.S. 295, 305 (1999). But the converse is not necessarily true. Where police have probable cause to search only in part of a car, they cannot search *elsewhere* in the car. *See United States v. Ross*, 456 U.S. 798, 824–25 (1982); *California v. Acevedo*, 500 U.S. 565, 580 (1991). While *Ross* and *Acevedo* concerned containers, the same principle applies to passengers. Without additional evidence tying the passenger's suspected misconduct to the driver or the car, it is not reasonable to assume that contraband is hidden elsewhere inside the car. When a *passenger* has contraband, therefore, that alone does not give police probable cause to search the driver's car.

A contrary rule would have implications well beyond this case. Permitting police to search a driver's car based on nothing more than what passengers carry with them would significantly erode drivers' privacy interests, permitting searches of their cars based on sheer proximity to their passengers. The Court should clarify that the automobile exception is not so broad.

The Court should grant certiorari.

## STATEMENT OF THE CASE

### A. Factual Background<sup>1</sup>

Like many Fourth Amendment cases, this one started with a car. While surveilling a “suspected drug target location” sometime in early October 2019, Illinois State Police officers observed a silver Cadillac arrive there. App. 8a. The car was registered to Brenda Berger and the driver was later identified as her son, Charles R. Hays. *Id.*

Later, on October 15, 2019, an Illinois State Police officer received information that the same Cadillac had been seen heading toward Taylorville, Illinois, reportedly without working taillights. *Id.* at 8a–9a. The officer notified Taylorville Police Chief, Dwayne Wheeler, of the issue. *Id.* at 9a.

Wheeler claims that he then observed the car with illegal side tints and crossing the center lane twice, though none of the alleged traffic violations were captured while Wheeler’s dashcam video was recording. *Id.* Wheeler subsequently pulled the car over. *Id.* Another officer, Jeremy Alwerdt, arrived to assist with the stop. *Id.*

Wheeler approached the driver’s side of the car, where Hays sat behind the wheel. *Id.* After advising Hays of the tinted windows, Wheeler ran his license, which was valid and clear. *Id.* at 9a–10a.

Meanwhile, Alwerdt approached the other side of the car. *Id.* at 9a. There, he observed Tamera Wisnasky sitting in the passenger’s seat. *Id.* at 10a. Wisnasky lied about her identity when Alwerdt asked

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<sup>1</sup> The facts are taken from the decisions of the lower courts.

about it. *Id.* But Alwerdt purportedly knew Wisnasky, and that she had an outstanding arrest warrant, and thus instructed her to exit the car. *Id.*

As Wisnasky left the car, Alwerdt noticed that she was concealing a glass pipe in her right hand. *Id.* Alwerdt tried to grab her hands, but Wisnasky shoved something into her mouth with her left hand. *Id.* This turned out to be a plastic container carrying 2.9 grams of methamphetamine. *Id.* Wisnasky was then placed under arrest. *Id.*

While Alwerdt dealt with Wisnasky, Wheeler pulled Hays from the driver's seat and handcuffed him. *Id.* Wheeler did not find any drugs or contraband on Hays. *Id.* Officers nevertheless began searching Hays's car, including its passenger compartment. *Id.* at 11a. They did not find any contraband there either. *Id.* Instead, they found only a screwdriver, which they used to justify expanding the search. *Id.* According to the officers, screwdrivers can be used to hide drugs in traps within the car. *Id.* at 3a. Based on this premise, the officers searched under the hood, including inside the engine's air filter. *Id.* When they removed the housing of the air filter, officers found a zip lock bag that contained 62.3 grams of methamphetamine. *Id.* at 11a.

### **B. Procedural History**

1. Based on the evidence seized during the October 15, 2019, traffic stop, a grand jury indicted Hays for possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A). *Id.* at 4a. Hays moved to suppress the evidence discovered in the car. *Id.* at 12a.

In response to Hays’s motion, the government argued that the search was legal based on the Fourth Amendment’s automobile exception. *Id.* at 16a. Specifically, the government asserted that Wisnasky’s possession of contraband “alone” gave the officers probable cause to search the car (including eventually under the hood). *See* Govt.’s Resp. to the Def.’s Motion to Suppress at 12, *United States v. Hays*, 2021 WL 4130501 (C.D. Ill. Sept. 10, 2021), ECF No. 36.

Rather than embrace this theory, the District Court relied on points that the government had not, such as the prior location of the car and the screwdriver, to find that probable cause existed. App. 17a–18a. Hays then entered a conditional guilty plea on his possession charge, preserving his right to appeal the denial of his motion to suppress. *Id.* at 4a.

**2.** The Seventh Circuit affirmed, concluding that law enforcement had probable cause to search the vehicle. *Id.* at 2a. While the court noted that Hays’s vehicle had been recently seen at a drug trafficking location, it ultimately adopted the rule that the government had originally urged—that a passenger’s possession of contraband furnishes probable cause to search the driver’s vehicle. *Id.* at 5a (“But we previously held that under the automobile exception, an officer had the authority to conduct a warrantless search of a car when he discovered the passenger in possession of contraband.”).<sup>2</sup> Relying on *Wyoming v. Houghton*, the court rejected any “driver/passenger

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<sup>2</sup> The Seventh Circuit’s opinion rested solely on the automobile exception, as the government had waived reliance on the search-incident-to-arrest exception. Brief for the United States at 14 n.2, *United States v. Hays*, 90 F.4th 904 (7th Cir. 2024) (No. 22-3294), ECF No. 27.

distinction” for purposes of probable cause determinations, since “a vehicle’s driver and passenger ‘will often be engaged in a common enterprise.’” *Id.* (quoting *Houghton*, 526 U.S. at 304–05). Officers’ discovery of contraband on Wisnasky thus established probable cause to search the interior of Hays’s vehicle. *Id.* The court then found that the officers’ discovery of a screwdriver inside the vehicle justified expanding the search to the air filter under the hood, where officers found methamphetamine. *Id.* at 5a–6a.<sup>3</sup>

**3.** This petition follows.

**REASONS FOR GRANTING THE WRIT**

The Seventh Circuit adopted a rule that a passenger’s possession of contraband alone establishes probable cause to search the driver’s vehicle. This holding conflicts with a decision from the Oregon Supreme Court and departs from this Court’s automobile-exception precedents. It also threatens to turn the automobile exception into a passenger-misconduct exception, allowing searches of cars based on what a passenger conceals and carries into them. That issue is of critical importance to the automobile exception’s scope. This Court should grant certiorari to resolve this conflict and to restore the automobile exception to its proper limits.

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<sup>3</sup> The Seventh Circuit separately erred in finding the screwdriver sufficient to justify extending the search to under the hood. However, if this Court grants certiorari and concludes the initial search of the vehicle’s *interior* was unlawful, then Hays would be entitled to relief because the screwdriver itself would only have been discovered pursuant to an unlawful search and thus could not have justified the search under the hood.

## I. THE SEVENTH CIRCUIT’S DECISION CREATES A SPLIT WITH THE OREGON SUPREME COURT.

The Seventh Circuit was not the first court to address whether a passenger’s possession of contraband alone establishes probable cause to search a vehicle. In *Herrin*, law enforcement pulled over Michael Herrin for driving with excessive muffler noise. 915 P.2d at 954.<sup>4</sup> During the course of the stop, officers discovered that Herrin’s two passengers possessed contraband—one had methamphetamine in her purse and the other had syringes in hers. *Id.* Based on the passengers’ possession of contraband and certain other observations about the passengers, officers concluded they had probable cause to search Herrin’s vehicle, including the trunk. *Id.* at 955. The ensuing search uncovered more methamphetamine and contraband in the vehicle. *Id.*

Herrin moved to suppress the evidence, arguing that the passengers’ possession alone was insufficient to establish probable cause to search his vehicle. The trial court granted the motion, and the Oregon Supreme Court unanimously affirmed, holding that officers lacked probable cause to search the vehicle. The court explained that “the officers did not connect [the driver] with the drugs or the paraphernalia found in the passengers’ personal effects,” nor did they connect the passengers “with the ownership and

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<sup>4</sup> Although the Oregon Supreme Court was interpreting Oregon’s Fourth Amendment corollary, Oregon courts interpret the constitutional “meaning of probable cause” to search consistent with the Fourth Amendment. *State v. Anspach*, 692 P.2d 602, 604 (Or. 1984); *see also State v. Lee*, 532 P.3d 894, 898 (Or. 2023) (defining “probable cause to search”) (quoting WAYNE R. LAFAVE, SEARCH & SEIZURE § 3.7 (6th ed. 2020)).

control of the automobile.” *Id.* at 956. And without some connection between the passengers’ possession of contraband and either the driver or the vehicle, suspicions about the passengers could not establish probable cause to search the vehicle. *Id.* at 956 & n.2.

The Seventh Circuit’s decision here is squarely at odds with *Herrin*. As noted, *Herrin* held that a passenger’s suspected wrongdoing is not sufficient to justify a search of the driver’s vehicle; there must be some basis to believe that the passenger’s wrongdoing implicates the vehicle or the driver to justify such a search. The Seventh Circuit, by contrast, rejected any “driver/passenger distinction” and held that officers have “authority to conduct a warrantless search of a car when he discover[s] the passenger in possession of contraband.” App. 5a. In short, the Oregon Supreme Court and Seventh Circuit have each analyzed probable cause based on a passenger’s suspected wrongdoing and reached opposite results. This Court should thus grant certiorari to resolve the conflict.

## **II. THE SEVENTH CIRCUIT’S DECISION DEPARTS FROM THIS COURT’S PRECEDENTS.**

The Seventh Circuit’s decision also departs from this Court’s precedents. The court’s conclusion that a passenger’s possession alone supplies probable cause to search inside a driver’s car conflicts both with precedents holding that suspicion as to something specific within a vehicle does not alone create probable cause to search elsewhere in the vehicle and with precedents holding that mere proximity to suspicious activity does not create probable cause. And the case on which the Seventh Circuit primarily relied, *Houghton*, did not address the question here—it

instead addressed what *follows* from the conclusion that officers in fact have probable cause to search the entire vehicle based on the *driver's* misconduct.

1. A permissible search “is defined” not only “by the object of the search[,]” but also by “the places in which there is probable cause to believe that it may be found.” *Ross*, 456 U.S. at 824. This Court has recognized that law enforcement can have probable cause to search an entire vehicle where suspicion extends to the entire vehicle. *See id.* But the Court has also indicated that it is not an all-or-nothing proposition. Where suspicion extends only to particular parts of a vehicle, a search is so limited.

*Ross* illustrates this distinction. In *Ross*, officers received information that a driver had just been seen selling drugs out of his car. 456 U.S. at 800. Based on that information, this Court held that officers had probable cause to search the car. *Id.* at 817. But the Court cautioned that probable cause to search will sometimes be limited to specific “places” within a car. *See id.* at 824. As the Court explained, “[p]robable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence” “does not justify a search of the entire cab.” *Id.*

In *Acevedo*, the Court “reaffirm[ed] that principle.” 500 U.S. at 580. There, officers watched the driver enter an apartment that had just received a shipment of marijuana, leave with a bag the size of one of the marijuana packages, place that bag in the trunk of his car, and drive off. *Id.* at 567. While the Court held that these observations justified a search of “the paper bag in the automobile's trunk[,]” *id.*, the Court also held that they failed to establish probable cause to

search “in any other part of the automobile[,]” *id.* at 580. As the Court put it, “a search of the entire vehicle would have been without probable cause and unreasonable under the Fourth Amendment.” *Id.*

Under these precedents, *if* officers have “probable cause to believe” that a driver’s contraband “may be found” *anywhere* in the “vehicle,” then they may search “every part of the vehicle and its contents that may conceal [that] object[.]” *Id.* at 570, 580 (quoting *Ross*, 456 U.S. at 824–25). If, however, officers only have probable cause to believe that part of a vehicle contains contraband, a search of the entire vehicle is “without probable cause and unreasonable under the Fourth Amendment.” *Id.* at 580. In other words, under *Ross* and *Acevedo*, suspicion of contraband in a container or part of a vehicle does not alone cast suspicion anywhere else in the vehicle.

While *Ross* and *Acevedo* concerned containers, the same principles apply to suspected wrongdoing by a passenger. Without some additional evidence tying the passenger’s suspected misconduct to the driver or vehicle, there is no probable cause to search elsewhere in the vehicle. Indeed, absent more information, there is no more of a link between what a passenger has in her hands and the rest of the car than there was between the bag in the trunk in cases like *Acevedo* and anywhere else in the vehicle.

The Seventh Circuit’s holding that an officer has “authority to conduct a warrantless search of a car when he discover[s] the passenger in possession of contraband” contravenes these precedents. App. 5a. And that holding will allow the government to justify searching inside the car regardless of whether it is

reasonable to believe that contraband will be found there.

That is wrong. Just as “[p]robable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab[,]” *Ross*, 456 U.S. at 824, a passenger’s personal possession of drugs does not alone support the conclusion that more drugs could be “hidden in any other part of the automobile[.]” *Acevedo*, 500 U.S. at 580.

**2.** This conclusion also accords with a deeper Fourth Amendment principle—that a person’s mere proximity to illegal acts does not lessen the Amendment’s protections. That principle prevents the neighborhoods in which someone walks from being grounds alone for a stop. *See Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (citing *Brown v. Texas*, 443 U.S. 47 (1979)) (“An individual’s presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime.”). It prevents the company that someone keeps from being the sole basis for a search of her person. *See Ybarra v. Illinois*, 444 U.S. 85, 91 (1979) (“[A] person’s mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person.”); *see also United States v. Di Re*, 332 U.S. 581, 587 (1948) (“We are not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person . . . .”). And, as relevant here, it prevents suspected wrongdoing by a passenger from alone providing probable cause to search a vehicle.

The Seventh Circuit’s decision conflicts with this principle. By permitting a search of Hays’s car based on his passenger’s possession of contraband, the court relied on his proximity to suspected wrongdoing (his passenger’s possession) to conclude that there was probable cause to suspect that Hays (or his vehicle) was involved. In short, the court equated mere proximity to illegality with probable cause of illegality. That too is wrong.

**3.** In focusing on the passenger to justify officers’ search of Hays’s car, the Seventh Circuit adopted the government’s theory that *Wyoming v. Houghton* rejected any and all distinctions between drivers and passengers for probable-cause determinations. App. 5a (stating that *Houghton* “reject[ed] a driver/passenger distinction”).

But *Houghton* did no such thing. *First*, *Houghton* dealt with a different issue—what follows from officers having probable cause to search the entire car. There, it was “uncontested” that officers had probable cause to search the entire vehicle. *See* 526 U.S. at 300. The question, then, was whether they could search every container inside the vehicle without “individualized probable cause for each one.” *Id.* at 302. The Court answered in the affirmative, based on a simple point: probable cause to search an entire vehicle justifies a search of the *entire* vehicle, including containers within it. *Id.* The issue here is distinct—what facts are necessary to create probable cause to search the vehicle in the first place.

*Second*, in *Houghton*, it was the *driver’s*—not the *passenger’s*—possession of contraband that supplied the probable cause to search the vehicle. *Id.* at 298.

That distinction between a car's driver and its passengers made perfect sense. *See Byrd v. United States*, 584 U.S. 395, 406 (2018) (quoting *Rakas v. Illinois*, 439 U.S. 128, 154 (1978) (Powell, J., concurring)). As explained, unlike passengers, drivers have dominion and control over their vehicles. *See id.* That makes it easier for drivers to hide items in their automobiles, including among a passenger's belongings—"perhaps even surreptitiously, without the passenger's knowledge or permission." *Houghton*, 526 U.S. at 305. But that problem was absent here. Wisnasky possessed the contraband on her person—the one space in the vehicle that was beyond Hays's control. *Cf. id.* at 303 (noting the heightened privacy and dignitary concerns afforded to one's person).

Third, *Houghton* did not disturb the principle in *Ross* and *Acevedo* that there must be a nexus between the suspected object and the place searched under the automobile exception. 6 WAYNE R. LAFAVE, SEARCH & SEIZURE § 7.2(c) (noting "it would be ridiculous to treat *Houghton* as if it had nullified th[e] pronouncement in *Acevedo*"). And here, as explained, there was no sufficient nexus between Wisnasky's contraband and Hays or his vehicle.

For these reasons, it is clear that the Seventh Circuit misinterpreted this Court's decision in *Houghton* and, in so doing, improperly departed from the principles established in *Ross* and *Acevedo*.

### **III. THE CASE RAISES AN IMPORTANT QUESTION ABOUT THE AUTOMOBILE EXCEPTION'S SCOPE.**

The importance of the issue presented goes well beyond whether the evidence from this search should be excluded. A rule that bases probable cause to

search a vehicle solely on a passenger’s possession of contraband would have significant implications for the privacy of drivers and move the Fourth Amendment one step closer to authorizing “a search of the car of Everyman.” *Brinegar v. United States*, 338 U.S. 160, 181 (1949) (Jackson, J., dissenting).

Passengers are a ubiquitous part of driving. States have dedicated hundreds of miles of road to those who share their cars with others to incentivize carpooling. *See* Office of Highway Policy Information, *High Occupancy Vehicle (HOV) Lanes—by State*, U.S. DEPARTMENT OF TRANSPORTATION (Nov. 7, 2014), <https://tinyurl.com/5jm49kd2> (cataloging the miles of high occupancy vehicle lanes across the country). Businesses thrive on providing passengers with rides. *See, e.g.*, Kellen Browning, *Uber Reports Record Ridership and Second Straight Quarterly Profit*, N.Y. TIMES (Nov. 7, 2023), <https://tinyurl.com/2k9bmxw8> (noting that “[p]assengers took 2.4 billion trips on Uber” in the third quarter of 2023). And when people go on road trips, they load their vehicles not just with containers, but also with passengers to keep them company. But while drivers often give rides to passengers, drivers retain an expectation of privacy in their cars as they do. *Byrd*, 584 U.S. at 407.

A rule that bases probable cause on what any given passenger brings with her jeopardizes both these practices and core Fourth Amendment principles. Such a rule would nullify the automobile exception’s nexus requirement. *See Ross*, 456 U.S. at 824; *Acevedo*, 500 U.S. at 580. Indeed, contraband concealed on a passenger’s person would allow for broad searches of a driver’s car based on the sheer proximity of the occupants to one another. Besides

leaving drivers to wonder whether they should pat down people to whom they offer rides, such a rule would turn the automobile into “a talisman in whose presence the Fourth Amendment fades away and disappears” as soon as a passenger climbs into her seat. *Coolidge v. New Hampshire*, 403 U.S. 443, 461 (1971) (plurality op.).

The automobile exception is not so broad. A passenger’s possession of contraband does not provide probable cause to search the automobile. Otherwise, drivers would need to search every passenger for contraband to make sure that they were not offering a free ride to probable cause. The Court should grant certiorari and prevent that from happening.

### CONCLUSION

The petition for a writ of certiorari should be granted.

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